



Mrs. Michelle O'Neill
Deputy Under Secretary for International Trade
United States Department of Commerce

Washington, D.C. 20230

Bern, December 9, 2008

Dear Mrs. O'Neill:

We acknowledge receipt of your letter of December 1, 2008 with the following content:

"Dear Mr. Thür:

I have the honor to transmit to you the U.S.-Swiss Safe Harbor privacy principles and the frequently asked questions (FAQs) regarding their implementation, as well as the Safe Harbor enforcement overview and a memorandum on damages for breaches of privacy, legal authorizations, and mergers and takeovers in U.S. law, all issued by the U.S. Department of Commerce on December 1, 2008. I am also transmitting letters from the relevant government bodies in the United States empowered to investigate complaints of failure to adhere to the Safe Harbor principles.

The U.S.-Swiss Safe Harbor privacy principles reflect our shared objective of enhancing privacy protection for our citizens and reinforcing legal security for firms in both countries. They take into account the fact that the transfer of personal data from Switzerland to a third country may take place only if the third country in question ensures an adequate level of protection.

The Department is issuing the enclosed documents, in cooperation with Switzerland, under its authority to foster, promote, and develop international commerce. On the basis of this letter and these documents, Switzerland intends to recognize the adequacy of protection provided by the Safe Harbor privacy principles implemented in accordance with the FAQs as meeting the requirements of Article 6 of the Federal Act on Data Protection. Other provisions of this Act pertaining to the processing of data in Switzerland will not be affected.

Both the Safe Harbor privacy principles and the FAQs ("the Principles") are intended to serve as authoritative guidance to U.S. companies and other U.S. organizations receiving personal data from Switzerland and wishing to establish a predictable basis for the continuation of such transfers.



The enforcement overview and other supporting documents are intended to explain how U.S. enforcement mechanisms, based either on law and regulation or self-regulation, satisfy the requirements of the Enforcement Principle and ensure that an organization's commitment to adhere to the Principles will be effectively enforced. The Safe Harbor documents need to be read against the U.S. legal system and its well known features, such as class actions and contingency fees.

U.S. companies and other U.S. organizations can be assured of the benefits of the Safe Harbor by self-certifying that they adhere to the Principles. The Department of Commerce intends to arrange for a list to be maintained of all organizations that self-certify their adherence to the Principles. Both the list and the notifications submitted by organizations containing information with regard to their implementation of the Principles are to be made publicly available, as are any proper and final adverse determinations made by a U.S. enforcement body and notified to the Department of Commerce (or its designee) that a Safe Harbor organization has persistently failed to comply with the Principles. Where, in complying with the Principles, an organization relies in whole or in part on self-regulation, its failure to comply with such self-regulation must also be actionable under Section 5 of the Federal Trade Commission Act prohibiting unfair and deceptive acts or another law or regulation prohibiting such acts as set out in the Principles.

The Principles apply only to companies or other organizations which fall within the competence of the Federal Trade Commission (FTC) or the Department of Transportation (DOT) and comply with the Principles implemented in accordance with the FAQs. Therefore, the Principles do not apply to financial institutions, including banks, savings and loans, and credit unions; telecommunications and interstate transportation common carriers; and packers and stockyard operators; as well as any other entities or activities that fall within the exceptions to the FTC's authority over unfair or deceptive acts or practices and are not subject to the authority of DOT (Annex III).

The framework established by the U.S.–Swiss Safe Harbor privacy principles implemented in accordance with the FAQs may need to be reviewed in light of experience and relevant developments. The Department of Commerce and the Swiss Federal Data Protection and Information Commissioner will consult regarding any proposed amendment to the Principles or other framework documents.

The framework established by the U.S.-Swiss Safe Harbor privacy principles is to become effective upon notification of completion of all internal legal procedures and to continue unless either Switzerland or the United States provides the other written notice of its intent to discontinue the framework. Such notice should be provided six months before the intended date of discontinuation.

Annex I	U.S. - Swiss Safe Harbor Privacy Principles
Annex II	Frequently Asked Questions
Annex III	Safe Harbor Enforcement Overview
Annex IV	Damages for Breaches of Privacy, Legal Authorizations and Mergers and Takeovers in U.S. Law
Annex V	U.S. Government bodies empowered to investigate complaints"

We share the understandings set forth in your letter, and we recognize that, within its scope, the framework established by the U.S.-Swiss Safe Harbor privacy principles provides a legal framework that guarantees adequate data protection. Therefore U.S. firms self-certifying under the



U.S.-Swiss Safe Harbor privacy principles framework are considered to dispose of an adequate level of protection in terms of art. 6(1) FDPA (Federal Data Protection Act¹, SR 235.1).

Furthermore, we inform you that the Federal Data Protection and Information Commissioner may recommend suspending data flows to a company or other organization that has self-certified its adherence to the Principles implemented in accordance with the FAQs (the Principles) in order to protect individuals with regard to the processing of their personal data in cases where the competent body in the United States or an independent recourse mechanism has determined that the organization is violating the Principles; or there is a substantial likelihood that the Principles are being violated; there is a reasonable basis for believing that the enforcement mechanism concerned is not taking or will not take adequate and timely steps to settle the case at issue; the continuing transfer would create an imminent risk of grave harm to data subjects; and the competent Swiss authorities have made reasonable efforts under the circumstances to provide the organization with notice and an opportunity to respond. The recommendation to suspend would cease as soon as compliance with the Principles is assured and the competent Swiss authorities are notified thereof. If evidence is provided that any body responsible for ensuring compliance with the Principles in the United States is not effectively fulfilling its role, the Swiss Government is to inform the U.S. Department of Commerce and, if necessary, present draft measures in a view to reversing or suspending the Principles or limiting their scope.

We thank you for your cooperation in this matter.

Sincerely,

Hans-Peter Thür

¹ http://www.admin.ch/ch/e/rs/c235_1.html